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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-30-2010

Judge : The Honourable Mr. P. Karthikeyan, Member (Technical)

Appeal No. : Application No. E/S/46/10 in Appeal No. E/39/10 (Arising out of Order-in-Appeal No. YDB/89/Bel/

Appellant : M/S Ruby Biotech Pvt. Ltd.

Respondent : Commissioner of Central Excise, Mumbai

Advocate for Pet/Ap. : For the Appellant : Shri Sanjay Dwidei, Advocate. For the Respondent : Dr. T. Tiju, SDR.

Judgement :

Per: Shri P. Karhikeyan

After hearing both sides on the stay application for some time, I find that the issue involved lies in a narrow compass and the appeal itself can be disposed of. Accordingly, the appeal is taken up for disposal after waiving pre-deposit.

2. After due process of law, the original authority confirmed demand of Rs.3,34,733/- under Section 11A of the Central Excise Act, 1944 found to be due from the appellants towards excise duty of their finished products P and P medicines destroyed and accounted in its Annual reports for the year 2002-03 and 2003-04. The original authority also demanded applicable interest and imposed

equal amount of penalty under Rule 25 of the Central Excise Rules, 1944 read with Section 11AC of the Act. The impugned order rejected the appeal filed by the assessee.

3. I have heard both sides.

4. I find that the consistent plea of the appellant before the lower authorities was that the goods, which were accounted as destroyed in its Annual reports for the relevant years were duty paid goods. The demand has been confirmed for the reason that the appellant had failed to substantiate its claim. The present appeal also takes the same ground. The appellant has enclosed copies of the invoices claimed to have covered clearances of the impugned P and P medicines, which were returned by the customers. The claim of the appellants is also supported by a certificate of the Chartered Accountant available on record. I find that the annexure to the show-cause notice listed out the goods involved against the 27 'vouchers'. These details were recovered from the accounts of the assessee's records. The invoices produced by the appellants along with the appeal carry the same numbers as the vouchers numbers figuring in the show-cause notice. Other particulars in each invoice and voucher also match. These particulars have also been certified by the Chartered Accountant. The documentary evidence now produced by the appellants was not produced before the original authority or the first appellate authority.

5. In the circumstances, I find it appropriate to remand the matter to the original authority to re-adjudicate the matter after considering the evidential material and allowing appellants an adequate opportunity to present their case. The appeal is thus allowed by way of remand. The stay application also gets disposed of.

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